



or callous indifference to the federally protected rights of others. *Smith v. Wade*, 461 U.S. 30, 56 (1983).

A plaintiff may assert § 1983 claims against a public official acting in his individual capacity and in his official capacity. For many reasons, including exposure to individual damage liability and the State's Eleventh Amendment immunity, these are different causes of action. "[T]he distinction between official-capacity suits and personal-capacity suits is more than a mere pleading device." *Hafer v. Melo*, 502 U.S. 21, 27(1991) (quotation omitted).

.... We have repeatedly stated the general rule: "If a plaintiff's complaint is silent about the capacity in which [he] is suing the defendant, we interpret the complaint as including only official-capacity claims." *Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 619 (8th Cir. 1995); *see Nix. v. Norman*, 879 F.2d 429, 431 (8th Cir.1989). "If the complaint does not specifically name the defendant in his individual capacity, it is presumed he is sued only in his official capacity." *Artis v. Francis Howell N. Band Booster Ass'n, Inc.*, 161 F.3d 1178, 1182 (8th Cir. 1998).

*Baker v. Chisom*, 501 F.3d at 923.

In general, leave to amend a pleading "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The court may deny leave to amend for various reasons, including "undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." *Moore-El v. Luebbers*, 446 F.3d 890, 901-902 (8th Cir.), *cert. denied*, 549 U.S. 1059 (2006) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

In this instance, the proposed pleading does not allege any "individual capacity" claims against defendants Fahey or Landow and the plaintiff cannot not recover punitive damages on the any of claims asserted against the City of Omaha or against Fahey and Landow in their official capacities. Because the proposed amendments are futile,

**IT IS ORDERED** that plaintiff's motion (Doc. 24) for leave to amend the complaint to include a request for punitive damages is denied.

**DATED July 22, 2009.**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**